

## **TWO ARGUMENTS FOR EXTENDING LEGAL PERSONHOOD TO NATURE**

**by**

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A thesis submitted to the faculty of The University of Mississippi in partial fulfillment of the requirements of the Sally McDonnell Barksdale Honors College.

Oxford

May 2019

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## ABSTRACT

### HAILEY WALLEY: Two Arguments for Extending Legal Personhood to Nature

This thesis will articulate new sorts of arguments under a legal philosophy framework that I believe can be used to protect the environment, but which also have a chance at convincing a wide range of citizens and politicians. The conclusion for which I will argue is that the United States should extend legal personhood to Nature. I will first provide detailed analyses of two countries that have already extended rights to nature, Ecuador and Bolivia. I will then proceed to compare the two cases and discuss what aspects of their models can and cannot be applied to the United States, and why. I will then lay the groundwork for my first argument by reviewing how legal personhood is currently treated in American law, and then demonstrate how the reasons used to justify extending legal personhood to other non-traditional entities apply to Nature. Finally, my second main argument is grounded on the premise that autonomy has great value: we need to extend legal personhood to the environment to protect individual U.S. citizens. The purpose of these arguments is to show how the environmentalist and libertarian parties can form a coalition to protect Nature, albeit for different underlying reasons. By doing so, I believe it will increase the chances for success in granting Nature rights and ensuring Her protection.

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## **Introduction**

As is evidenced by climate change and its noticeable effects, the Earth is currently dying at an unprecedented rate that humanity can no longer ignore. In the last decade, the world's atmospheric carbon dioxide levels have increased by 23 parts per million, the average global temperature has increased by 3.2 degrees Fahrenheit, and the sea levels have risen by 43 millimeters. These numbers do not mean anything out of context, though, so let us take this into consideration: the highest recorded carbon dioxide levels on Earth prior to 1950 were never above 300 parts per million, and we are now reaching 410 part per million this year; we have not seen a decline in average global temperatures since 1910; and sea levels have risen by nearly 250 millimeters since 1870. This goes to show the dire situation humanity faces in light of our unsustainable actions, and it calls for proactive measures to be taken to prevent further damage.

However, announcing that something needs to be done is different from convincing citizens and politicians that action is necessary. Although there are numerous credible sources that recommend action, climate change continues to be questioned and/or refuted as a way to justify our capitalistic tendencies that often utilize unsustainable methods in the name of efficiency. Moreover, even those who are sympathetic may see no clear way forward, and may resign themselves to believing that there is no way to change the minds of doubters and skeptics.

My thesis will articulate new sorts of arguments under a legal philosophy framework that I believe can be used to protect the environment, but that also have a chance at convincing a wide range of citizens and politicians. The conclusion for which I will argue is that the United States should extend legal personhood to Nature. If such personhood were extended, the environment would be far better protected and healthy. The arguments for this conclusion, however, will not be based on extremely controversial premises or ideas that will strike Americans as strange. On the contrary, my arguments will be largely be based in concepts that

are already widely recognized and accepted in American law and tradition: namely, that the disabled and corporations are treated as legal persons, and that individual autonomy has great value. Someone who is not an environmentalist could accept the arguments I have developed in my thesis. In fact, someone who is a proponent of libertarianism could accept my arguments.

I believe that by taking this legal approach the environmental movement can diversify its platform in order to gain wider support which will encourage the implementation of environmental protection statutes.

## **Part I: Historical Examples of Extending Personhood to Nature**

Some may think that we do not need to make new arguments to defend the idea that the environment deserves the status of a legal person. After all, countries like Ecuador and Bolivia have already given the environment this status, and we might assume that America can simply follow their example. In this first part of my thesis, I'll argue that such an approach won't work. Although we may wish to copy certain specific aspects of their approach, the model used in Ecuador and Bolivia cannot be directly applied in the U.S. If the U.S. is to grant the environment the status of a legal person, a different approach will be needed than the one pursued by these countries.

In this section, I will first provide detailed analyses of two countries that have already extended rights to nature, Ecuador and Bolivia. I will then proceed to compare the two cases and discuss what aspects of their models can and cannot be applied to the United States, and why. This, then, will set up my argument in the following sections as to how I believe America will need to approach extending rights to Nature in order for it to be successful.

### *1.1 Case Studies: Ecuador and Bolivia*

Two Latin American countries have already instated such rights to nature, namely Ecuador and Bolivia. In these countries, the Rights of Nature function as both a religious principle of inclusion and as a weapon against the State. Both elements were covered under the rubric of overall political reform - 'ethnodevelopment.

### I.1.a Case Study: Ecuador

Ecuador has a presidential republic with a representative democracy, and is considered a plurinational polity; seven percent of its population is of indigenous heritage and another seventy percent is of mixed indigenous and European heritage, known as Mestizos.<sup>1</sup>

In 2008, Ecuador's president, Rafael Correa, proposed a redrafting of the Ecuadorian constitution to grant rights to Pachamama. The Confederation of Indigenous Nationalities of Ecuador (CONAIE) was largely responsible for Correa's election and the establishment of the new law and constitution. The redrafted Constitution made these provisions in Chapter 7, now known as the Rights of Nature:

Article 71: Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

Every person, people, community or nationality, will be able to demand the recognition of rights for nature before the public. The application and interpretation of these rights will follow the related principles established in the Constitution.

The State will motivate natural and juridical persons as well as collectives to protect nature; it will promote respect towards all the elements that form an ecosystem.

Article 72: Nature has the right to restoration. This integral restoration is independent of the obligation on natural and juridical persons or the State to indemnify the people and the collectives that depend on the natural systems.

In the case of severe or permanent environmental impact, including the ones caused by the exploitation of non renewable natural resources, the State will establish the most efficient mechanisms for the restoration, and will adopt adequate measures to eliminate or mitigate the harmful environmental consequences.

Article 73: The State will apply precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.

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<sup>1</sup> "Ecuador Population 2019." Ecuador Population 2019 (Demographics, Maps, Graphs). Accessed March 18, 2019. <http://worldpopulationreview.com/countries/ecuador-population/>.



The introduction of organisms and organic and inorganic material that can alter in a definitive way the national genetic patrimony is prohibited.

Article 74: The persons, people, communities and nationalities will have the right to benefit from the environment and form natural wealth that will allow wellbeing.

If the environmental services cannot be appropriated, its production, provision, use, and exploitation will be regulated by the State.<sup>2</sup>

The people of Ecuador voted on this, and nearly two-thirds of the populace voted in the affirmative, therein resulting in its establishment. In this document, we can see legal rights being explicitly extended to Mother Nature. For example, Article 71 states Her right to exist and flourish, and it provides her legal representation by the populace to enforce this right.

However, though the law may have its intellectual origin in ideas promoted by CONAIE, there were other important political influences at play. In fact, in some ways it seems that the indigenous ideology espoused by CONAIE was deployed more as a lobbying effort than serving as the actual cause of its establishment. I believe there were at least three other groups that helped cause the establishment of this new law.

First, the primary political force at work was the 2006 Alianza Pais government plan termed “revolucion ciudadana” - citizen revolution - that was based on the Quechwa (indigenous group) principles of “sumak kawsay,” or “living well.” These principles refer to “a development regime based on well-being as opposed to neoliberal economic growth.”<sup>3</sup> When a group of unsolicited citizens proposed the incorporation of rights for animals and nature to the Constitutional Assembly, the Pais government took hold of this idea as a pretext for the radical transformation of the new government. Alberto Acosta, an economist, academic, politician, and environmental activist who served as the Energy Minister and president of the Constitutional Assembly during its redrafting, argued for the establishment of nature’s rights from the

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<sup>2</sup> "Rights of Nature Articles in Ecuador's Constitution." The Rights of Nature. <https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf>.

<sup>3</sup> Akchurin, Maria. "Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador." *Journal of the American Bar Foundation: Law and Social Inquiry* 40, no. 4 (2015): 954.

perspective of environmental justice by pointing out that the expansion of rights has always been thought of as unthinkable until it is done - e.g. women's rights. He argued that it was time to recognize that the environment "has values that are inherent and independent of human use," and that "Guaranteeing a healthy and ecologically balanced environment goes hand in hand with cultural strengthening, and that is a genuine human right that is weaved together with the right to life, health, work, dignity, and identity."<sup>4</sup> Acosta, then, like other members of the Pais government, approached this from the perspective that while the environment is an independent entity deserving of rights, it also serves as vehicle for expanding humans rights and protections.

Also greatly responsible for this law's establishment were the environmental social movements that did much of the "groundwork for elevating the environmental agenda at the national level during the prior decades."<sup>5</sup> These environmental movements were spurred after the rediscovery of oil in the Ecuadorian Amazon basin in 1967, where a refinery was established and the Trans-Ecuador oil pipeline system was created.<sup>6</sup> This pipeline system created conflict between the State and the people who ascribed to indigenous ideology. Those in the environmental social movement were worried that, in this conflict, land and resources were being viewed as commodities to be exploited rather than as making up an interconnected force that binds all of reality. There were also other environmental lawyers, along with activists and governmental officials, who had previously been looking into this concept in response to the continued patterns of environmental degradation in the country.

The third major group that pushed for the change in law was not, in fact, too concerned with the Rights of Nature as such. Rather, this group was motivated by the idea that Rights of Nature could function as a weapon against the State - the State that was exercising unfair power

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<sup>4</sup> Tanasescu, Mihnea. "The Rights of Nature in Ecuador: The Making of an Idea." *International Journal of Environmental Studies* 70, no. 6 (2013): 849.

<sup>5</sup> Akchurin, 939.

<sup>6</sup> Ibid, 945.

over its people. For example, this group was very troubled by Article 408 that clearly states that “all natural resources are the property of the state.”<sup>7</sup> Such an article claims that the state has the power to exploit the region’s natural resources without any approval or say of the people. The indigenous peoples, in particular, were hurt by this due to the clear difference in moral principles between them as naturalists and the State. The State was only focused on profit and industrialization, which is one of the reasons this issue came to be addressed during the constitutional redraft. So, this fight was not only about the environment. This group was also fighting for overall political reform that would “prioritize food sovereignty over exports, the use of traditional agricultural practices as opposed to methods relying on heavy use of monocultures and pesticides, and valuing biodiversity.”<sup>8</sup> In other words, many of the indigenous proponents were fighting not only for Pachamama, but also for themselves as marginalized peoples.

In conclusion, then, the extension of legal rights to the environment in Ecuador is not a simple story of promoting environmentalism. Many groups had many different motivations for this action. Moreover, it must be said that since the law was passed, there have been continuing challenges in Ecuador: the government still favors export industries that bring in revenue, and it never did suspend oil drilling in the Yasuni National Park. Nevertheless, the people of Ecuador continue to use the power this law did grant to them. They have filed suit in Her name, such as the cases involving “the Nilcambamba River in Loja province, another involving the Blanco River in Pichincha province, environmental damage connected to a mining concession in Mirador in El Panguí, Zamora, and another connected to road infrastructure expansion in Santa Cruz in the Galapagos.”<sup>9</sup>

#### I.1.b Case Study: Bolivia

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<sup>7</sup> Tanaesescu, 850.

<sup>8</sup> Akchurin, 955.

<sup>9</sup> Ibid, 961.

Another country to have granted rights to Pachamama, or Mother Nature, is a neighboring Andean nation, Bolivia. In 1952, the lowland indigenous peoples were excluded from the agrarian reform, which classified them as ‘savages.’ In response, a global indigenous rights movement slowly emerged in Bolivia, and in the 1970s it sought “to challenge the until then dominant ‘assimilationist’ approach to indigenous development” in order to preserve fragile or valuable environments from destruction.<sup>10</sup> The indigenous rights advocates were lobbying for alternative models of development that would allow indigenous peoples to develop in a way that was appropriate for their culture. This lobbying effort brought about a paradigmatic shift in Bolivia towards ‘ethnodevelopment,’ or ‘development with identity.’<sup>11</sup> In fact, in the 1980s and 1990s, when the World Bank began promoting and financing the collective titling of indigenous territories in numerous countries in order to protect the rights of ‘tribal-people’ from being harmed by developmental projects, this World Bank effort was able to build upon the new ‘ethnodevelopment’ plan introduced in the previous decade.

In Bolivia, we thus see that the shift towards ethnodevelopment was largely based on the idea that indigenous people have a role in biodiversity conservation once they are provided with secure land rights. The idea that cultural diversity and biodiversity are closely linked is what spurred this shift; “our knowledge of biodiversity rests in cultural diversity, and conserving biodiversity helps strengthen cultural integrity and values,” and the indigenous peoples were the ones with the greatest knowledge regarding biodiversity in their region, which made them vital to its protection.<sup>12</sup> This is how indigenous people came to be known as ‘guardians of nature.’

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<sup>10</sup> Anthias, Penelope, and Sarah A. Radcliffe. "The Ethno-environmental Fix and Its Limits: Indigenous Land Titling and the Production of Not-quite-neoliberal Natures in Bolivia." *Geoforum* 64 (2015): 259.

<sup>11</sup> Ibid, 259.

<sup>12</sup> Ibid, 260.

This shift in perception regarding the indigenous was very different from the past. They had previously been classified as ‘savages’ in Bolivia’s 1952 Agrarian Reform Law, which excluded them and led to exploitative labor practices in their territories. In response to the world-wide attention on the nation and its indigenous community that resulted from the World Bank titling initiatives, Bolivia flipped its stance by recognizing indigenous territorial claims in its 1996 Agrarian Reform Law under a new legal category of Original Communal Lands (Tierras Comunitarias de Origen). This reform enabled indigenous groups to “formalize their land rights and thus to be able to exclude land colonization and resource extraction from their territory;” however, subsoil resources were not included and the lands titled to them were often the least productive.<sup>13</sup> This acts as an example of how these laws are meant to function in liberal law: Bolivia’s government only changed its stance once the world took interest in their indigenous peoples’ rights, and even then, the changes they made were undermined by exploitative clauses that bolstered federal power.

As was the case in Ecuador, it is clear that the basis of this movement wasn’t simply to protect biodiversity and the environment. Rather, one of the main motivations was to protect the people affected by her destruction, especially the indigenous who have dual interests in the form of religious protection and economic security. In other words, these laws, when upheld, are valuable only inasmuch as they serve as an instrument for self-preservation.

#### I.1.c Comparing the Cases of Ecuador and Bolivia

Before asking whether the United States could follow the model of Ecuador or Bolivia in extending legal rights to the environment, we should pause and articulate the major components of their approach. I believe there are two main elements in both case studies. First, both of these

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<sup>13</sup> Ibid, 262.

nations have predominant indigenous populations that continue to adhere to their indigenous religious beliefs, which revolve around the Andean goddess Pachamama who parallels our conception of Mother Earth. Latin America was converted to Christianity, specifically Catholicism, during the Spanish Conquest, but the indigenous peoples found a way to retain their religious ideology by melding the two religions into one, which is still how it functions today. Mother Mary, for instance, became the new representation of Pachamama, as demonstrated in the Andean Renaissance paintings of her depicted as a mountain.

When the Rights of Nature were included in the Bolivian Constitution in 2008, the Bolivian government still formally aligned itself with the Catholic Church; a year later they became a secular state as a way to promote religious freedom and inclusion, yet they retained the recognition of Pachamama within the Rights of Nature. Ecuador, too, is a secular state, yet it also utilized indigenous religious language by referencing Pachamama within its Rights of Nature clause. In both cases, then, we see that the establishment of legal personhood in these countries was highly influenced by this religious orientation toward nature that persists within this region.

The other main common element in both of these case studies is that the motivation for extending rights to the environment wasn't simply for the sake of environmental protection, but rather to protect the people affected by Her destruction. We have found that this is especially true for the indigenous peoples who have dual interests in the form of religious protection and economic security. In both Bolivia and Ecuador, the indigenous peoples were hurt by the exploitation of natural resources by the government. In both cases, the State was focused on profit and industrialization at the expense of the indigenous people, and in both cases these people were looking for a way to exercise their power as citizens. In fact, that is why this issue came to be addressed during the constitutional redrafts. Moreover, the

indigenous groups who were most commonly affected were the agricultural workers, and thus the exploitation of the environment by the government and large corporations threatened their economic livelihood.

In these ways, many of the indigenous proponents were fighting not only for Pachamama, but also for themselves as marginalized peoples. These laws were not attempts to prioritize nature over people, but rather legal tactics to protect the humans who were also part of nature.

### *1.2 Application of the Ecuadorian and Bolivian Cases to the United States*

We have found that the model used in Bolivia and Ecuador to extend legal rights to Mother Nature had two parts: first, building on indigenous religious beliefs; second, using environmental rights to protect vulnerable citizens. Could this same two-part model be used in the United States? I doubt that it could be used effectively for two reasons.

First, it is difficult to see how indigenous religious beliefs could find traction in a secular nation like America. The U.S. would not be able to approach such a shift towards eutierrianism, or becoming one with nature, in the same fashion. The U.S. is an inherently secular nation; the First Amendment of its Constitution delineates a separation of church and state and makes it illegal to impede on the religious rights of its citizens.

In fact, it is quite telling that studies documenting environmental activism in the United States have shown that they tend to steer away from any religious grounding. Take, for example, Kauffman and Martin's study of environmental cases from the United States, New Zealand, and Ecuador.<sup>14</sup> Their study was extremely thorough and they documented many different aspects of

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<sup>14</sup> Kauffman, Craig, Pamela Martin. "Comparing Rights of Nature Laws in the U.S., Ecuador, and New Zealand: Evolving Strategies in the Battle Between Environmental Protection and 'Development.'" Paper presented at the International Studies Association Annual Conference, Baltimore, MD, February 2017, 1-45.

the environmental movement in these different countries. They examine how people in all three countries define nature, who speaks for nature, the rights granted to nature, the hierarchy of the rights in regard to the legal system overall, its inclusion of precautionary principles, its supportive secondary laws, its legal standing, and its recognition by the courts. Kauffman and Martin found that the laws of both New Zealand and Ecuador were highly influenced by indigenous beliefs that consider even non-living aspects of nature as possessing metaphysical characteristics that make them deserving of moral consideration. However, even though their account was extremely detailed and exhaustive, they uncovered no evidence that ecosystems in United States ordinances are framed as living, spiritual beings. On the contrary, they are conceptualized as “natural communities” whose welfare is necessary for the well-being of human communities.

It is also important to mention that America is much more diverse and pluralistic than these Latin American nations. This is evidenced by the partitioning of its land into fifty states, many of which are comparable in size to all of Ecuador and/or Bolivia. Also there is the fact that America is composed of immigrants from all reaches of life. For this reason, America does not hold as singular an identity as these Latin American countries; it incorporates foreign customs in varying degrees according to each individual. Thus, the land size and demographics of America differ greatly from those of both Ecuador and Bolivia, and this is one reason why their models cannot be directly applied to the United States.

Second, I believe that there are good reasons to think that the model used by Ecuador and Bolivia has not been entirely successful. Studies have found that these laws’ basis in religious ideology actually *weakens* their authority because they primarily function in liberal law as a way to project an idealistic image to the rest of the world rather than being taken seriously by the respective governments. In proving this claim there is the example of Ecuador not having



suspended the drilling of oil in the Yasuni National Park, even though this contradicts their Rights of Nature laws.

I believe it is clear, then, that the first component of the Bolivia/Ecuador model should not be used in the United States. But what about the second component – the notion that extending rights to the Environment could be used as a tactic for protecting citizens? Though Bolivia's and Ecuador's Rights of Nature are both grounded in indigenous religious beliefs with the intent of protecting Pachamama, the basis of these movements was also meant to protect the people affected by Her destruction. In both countries, indigenous people used the Rights of Nature as a weapon against the State that was exploiting their natural resources, treating them as inferior, and causing economic insecurity.

Interestingly, Kauffman and Martin found that a similar approach was taken in the U.S. communities that he analyzed. They found that nature's rights were often linked to the concept of community rights as a tool for protecting themselves against the vagaries of corporate property rights. While it was never clear how seriously environmental advocates took the idea that Nature itself was supposed to be protected as a legal person, they repeatedly extended Mother Nature legal personhood as a mechanism for protecting the people. This is a common theme that seems to have mobilized this movement.

### *1.3 Conclusion*

Based on the historical examples of Bolivia and Ecuador, what sort of approach should environmentalists use to extend legal personhood to the environment in the United States?

First, it is interesting that the environmental changes in both of these countries built upon preexisting beliefs. As we've seen, in Bolivia and Ecuador, these preexisting beliefs were religious in nature, and I've argued that we cannot hope to find such religious beliefs in the United States. That said, I do believe that environmentalists can successfully find different kinds of pre-existing beliefs which they could build upon to extend personhood to Nature. As I

will argue in Parts II and III of my thesis, environmentalists in the United States should turn to widely-held beliefs in the legal world about *corporate* personhood. I'll argue that arguments for extending legal personhood to corporations can be copied and built upon to extend legal personhood to Mother Nature.

Second, I think the model of Bolivia and Ecuador is helpful in showing that people will readily accept extending rights to Nature if it can be shown that such rights can be used as a tactic of self-protection. In part IV of my thesis, I'll argue for a version of this sort of argument that I believe would work well in the United States. I will argue that legal personhood could be extended to Mother Nature as a tactic for protecting the deeply-entrenched value of personal autonomy.

## **Part II: The Current Status of U.S. Legal Personhood**

To find a more successful approach for extending personhood to nature, I think we should turn to current American law and core philosophical principles. An argument that incorporates current American norms and legal precedents has a better chance of being persuasive than one incorporating the norms and precedents of South America. In this part of my thesis, I lay the groundwork for that argument by reviewing how legal personhood is currently treated in American law. In the next section, I will show how this American notion of legal personhood can be extended to nature.

### *II.1 Description of Metaphysical Personhood vs. Legal Personhood*

We should begin by clarifying what is meant by ‘legal personhood’; it should not be confused with ‘metaphysical personhood’. Metaphysical personhood refers to “a basic category of reality encompassing beings of a certain type: rational, moral agents, language using, etc.”<sup>15</sup> Legal personhood, by contrast, “is any human or non-human entity that is recognized as having privileges and obligations, such as having the ability to enter into contracts, to sue, and to be sued;” it “often recognizes that certain groups of individuals can be considered as a unit, an actor, a legal person.”<sup>16,17</sup> Because these are very different, legal person status can be extended

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<sup>15</sup> "Concept of Personhood." University of Missouri School of Medicine. Accessed February 14, 2019. <https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/personhood>.

<sup>16</sup> Kornhauser, Lewis, and W. Bentley Macleod. "Contracts between Legal Persons." *National Bureau of Economic Research*, 2010, 1.

<sup>17</sup> "Concept of Personhood."

to artificial persons, such as corporations, unlike with the metaphysical denotation that is grounded in “objective” aspects of reality.<sup>18</sup>

Almost all U.S. citizens fall under both categories of personhood, but there are instances where this is not necessarily the case. For example, consider cognitively disabled persons. While these citizens sometimes do not possess the necessary attributes to be considered metaphysical persons, the law bolsters their rights as legal persons in order to protect their rights as citizens and humans to the greatest extent possible. This solidifies their presence as moral agents within society. Then there are those instances where non-human entities, like corporations, which are not metaphysical persons in any sense, are granted legal personhood under American law.

In both of these cases, American law has extended legal personhood to entities that do not fulfill the metaphysical requirements for personhood. It is important for my argument that we catalog the arguments used in American law that justify this extension. I will first discuss disabled persons in regard to their capacity, or lack thereof, to be defined as metaphysical persons; and then consider how these persons have been granted legal personhood by way of a guardian relationship. Then, I will move to discussing the United States’ granting of legal personhood to corporations, and the ways in which corporations are conceived by the law in order for them to be deserving of such status.

## *II.2 Legal Personhood as Extended to the Cognitively Disabled*

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<sup>18</sup> There is another distinction of personhood in regards to morality: “a moral person is an agent who is accountable; who has both rights and responsibilities” (Dennett 1981: 176). This distinction, however, can arguably be contained within both “metaphysical” and “legal” personhood considering that to have privileges and obligations is synonymous with having rights and responsibilities, and to be a moral agent is a prerequisite for being a metaphysical person.

Disabled persons, and more specifically those that are mentally disabled, are often unable to act as rational or moral agents, and are thus metaphysically different from other persons. That being said, the U.S. government recognizes the inherent human nature of a disabled person in the same way a human fetus, at 24 weeks old, is considered human even though it lacks rationality or moral agency.

The 2006 United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides a particularly helpful way of understanding the reasons the disabled need the special protection of legal personhood. There was “an emerging consensus in international human rights discourse on the notion that all human persons, regardless of their decision-making capabilities, should enjoy ‘legal capacity’ on an equal basis” to those who do have the ability to voice and exercise their rights.<sup>19</sup> As advanced by Flynn and Arstein-Kerslake, there are currently three ways legal systems inhibit the inclusion and representation of disabled persons: status, outcome, and function. The status approach entails an individual being denied legal capacity based on their medical/legal status as disabled. Under the outcome approach, the individual’s legal capacity is denied or restricted based on “the perception that the individual has made a poor decision,” such as having checked themselves out of a psychiatric treatment center that results in legal restrictions to prevent them from leaving.<sup>20</sup> Lastly, on the functional approach the individual is determined by medical authorities to be unable to “use, weigh, and retain information in order to make a decision, understand the consequences of the decision, and communicate the decision to others.”<sup>21</sup>

It was because the disabled were not able able to participate in the political sphere in these three ways that governments initially provided paternalistic protection by the law. This

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<sup>19</sup> Flynn, Eilionoir, and Anna Arstein-Kerslake. "Legislating Personhood: Realising the Right to Support in Exercising Legal Capacity." *International Journal of Law in Context* 10, no. 01 (2014): 82.

<sup>20</sup> Ibid, 86.

<sup>21</sup> Ibid, 86.

paternalistic approach to representing disabled persons relies on ‘substituted judgement’ in which, in the wake of being classified disabled, their legal capacity is stripped from them and a third-party is assigned to make decisions for them based on the objective or perceived ‘best interest’ of the disabled person.

At the 2006 United Nations meeting, however, it was agreed that there was a fairer approach than the paternalistic one. It was decided that disabled persons are better protected by way of guardianship rather than strict paternalism. Along these lines, there is a call in moral philosophy discourse for a holistic and inclusive notion of personhood that it is premised on the “communicative and semantic aspects of human capabilities” rather than on cognition or rationality.<sup>22</sup> In implementing this holistic concept, a newly proposed approach, the support model, entails an impartial guardian providing the necessary support to enable the individual to exercise their legal capacity based on their existing strengths rather than focusing on the deficits of the individual.

The CRPD promoted the extension of legal personhood to the disabled by way of guardianship in Provisions 3 through 5 of Article 12 of the Convention:

3. States’ parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States’ parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law...such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will, and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible, and are subject to regular review by a competent independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.

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<sup>22</sup> Ibid, 84.

5. Subject to the provision of this article, States' parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.<sup>23</sup>

As a member of the United Nations, the United States signed this Convention on July 30th of 2009 without any ratifications or optional protocol action.

This support model, then, is a guardianship approach where the disabled are allocated a guardian who aids in representing them in legal matters according to their own wishes rather than being subjected to paternalistic oversight. This move towards guardianship proves to be revolutionary in its recognition of disabled persons as capable of acting as legal and moral agents via representation. Though the line between guardianship and paternalism may prove to be vague in certain instances when the disabled person in question has very limited capabilities of expression or communication, the move towards recognizing their personhood and the actions taken to protect this status is nonetheless a significant step toward providing them equal opportunities.

### *II.3 Legal Personhood as Extended to Corporations*

An even more dramatic example of non-traditional entities being considered legal persons in the United States is the extension of legal person status to artificial beings like corporations. Corporations were granted legal person status and rights in 1886 by the United States Supreme Court under the argument that corporations had been “delegated responsibility for ensuring society’s economic welfare.”<sup>24</sup> But as time has gone on, there have been many proposed arguments as to why legal personhood should be extended to corporations. Indeed, in current American law, there are at least five different ways corporations are conceptualized that

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<sup>23</sup> The United Nations. 2006. “Convention on the Rights of Persons with Disabilities.” *Treaty Series* 2515 (December): 3.

<sup>24</sup> Johnson, Lyman. “Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood.” *Seattle University Law Review* 35, no. 1135 (2012): 1142.

then justify the extension of legal personhood status to them: the concession theory, the aggregate theory, the real entity theory, the nexus of contracts theory, and the intelligent machine metaphor.<sup>25,26</sup>

The concession theory deems a corporation to be an ‘artificial person’ that depends on the law to give it legal personality. Along similar lines, the nexus of contracts theory is an economic approach that perceives corporations as entities that gain rights based on contracts drafted by individuals that delineate such rights and boundaries. Under these theories, the corporation is perceived to be a ‘person’ merely in legal terms as a way to address what rights and responsibilities it holds, but it is not in any way believed to resemble or act as a real person. These two theories differ primarily in that the concession theory calls for the federal and state governments to decide the extent of a corporation’s rights and responsibilities while the nexus of contracts approach places this authority in the hands of the shareholders. That is why the nexus of contracts theory is an economic approach: it provides protection and power to the owners of the company who will utilize such authority to their monetary advantage.

The aggregate theory assumes a corporation to be a collection of individuals that yields the rights and duties of the persons who compose it. This theory is the first step towards attributing human qualities to a corporation in that it recognizes the corporation as an overarching representation of those within it. The corporation is viewed as an extension of the peoples who compose it, which therein justifies its protection under the law as a legal person.

The intelligent machine metaphor theory views corporations as intelligent machines that act independently of human action, and exist prior to and after individual members. This can be perceived as either the ultimate representation of a corporation acting as a human, or as the least anthropomorphic representation of a corporation. On the one hand, it is saying that a corporation

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<sup>25</sup> Pollman, Elizabeth. "Reconceiving Corporate Personhood." *Utah Law Review*, 2011, 1641-1670.

<sup>26</sup> Ripken, Susanna K. "Corporations Are People Too: A Multi-Dimensional Approach to the Corporate Personhood Puzzle." *Fordham Journal of Corporate and Financial Law* 15, no. 97 (2010): 106-13.



is comparable to an artificial intelligence robot that is not human but is nonetheless treated as one for the sake of legal means; this is similar to how the concession and nexus of contracts theories perceive corporations. However, intelligence is often used as the primary standard for distinguishing humans from other living creatures. Thus, it can be argued that the independent nature of a corporation's intelligence, as well as the breadth of the intelligence, would be sufficient to consider it a pseudo-super-human.

The most widely endorsed approach in American law is the real entity theory, wherein the corporation acts as a collective consciousness that results from the discussion and compromise among the individual members that compose it, and that exists prior to and separate from the State. On this theory, the corporation is perceived to be a 'real' person in terms of its capacity to act as a moral agent and utilize rational thinking via the collective intent and action of its constituents; and since the corporation is functioning as a real individual, it must be held responsible as a legal person.

It is important to note that the word 'real' in this context is not synonymous to 'natural.' It is not that the corporation is believed to be a natural human being, but rather, the theory recognizes that a corporation is actually existing, which is made possible by the collective consciousness that constitutes its being. In this sense, like the concession and nexus of contracts theories, the real entity theory also views the corporation as an artificial person, with the added explicit recognition that it is also real. It also differs from those two theories in that while it may recognize the synthetic nature of this real entity, it does not differentiate the corporation from humans based on such; it grants corporations rights that are not necessarily guaranteed by the contracts that spur their creation. In this regard, the real entity theory believes the differentiation between natural and artificial persons to be irrelevant because both are granted inherent and inviolable rights that are protected under the Constitution.

Though the real entity theory has since prevailed in how the U.S. legal system perceives corporations as persons, it should be noted that even the real entity theory is incomplete in that “it fails to illuminate why the entity should receive constitutional protection as a person and what the scope of that protection should be.”<sup>27</sup> For instance, corporate entities do not receive all the constitutional powers accorded to natural persons; they lack the Fifth Amendment protection against self-incrimination, they cannot vote or become citizens, and, under corporate statutes, they cannot serve as directors of corporations, unlike individuals.<sup>28</sup> Also, as artificial persons, corporations can have restrictions and sanctions that would never be imposed on humans but are done so in these corporate instances because they enhance the constitutional rights of humans.<sup>29</sup> For instance, the Sherman Antitrust Act of 1890 was enacted in order to restrict corporations from forming monopolies because this may lead to the encroachment on a citizen’s right to liberty in that it could force consumer decisions by eliminating all competition.

Thus, even under this prevailing real-entity theory, the conception of corporations as legal persons is vastly different from how we perceive traditional humans as legal persons. Though we may consider them artificial persons for the sake of legal terminology, the application of legal person status to these non-traditional entities grants them specific rights and restrictions that are unique to them in comparison to those granted to U.S. citizens. We may arguably assert, then, that rather than fully extending legal person status to include corporations, we have actually created a sub-category of legal personhood that contains corporations in the same way that disabled persons have been granted a distinctive form of legal person status.

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<sup>27</sup> Pollman, 1663.

<sup>28</sup> Johnson, 1156.

<sup>29</sup> Graver, David. "Personal Bodies: A Corporeal Theory of Corporate Personhood." *University of Chicago Law School Roundtable* 6, no. 1 (1999): 250.

With a clear conception of legal personhood, and with an overview of how this has been applied in the U.S. to things that are different from typical metaphysical persons, I can begin my argument for extending legal personhood to nature.

### **Part III: Extending Personhood to Nature: The Argument by Analogy**

My first argument is an extended argument by analogy: legal personhood is currently extended to corporations and the disabled; Nature resembles the disabled and corporations in relevant ways; thus, legal personhood should be extended to Nature. In comparing the disabled to the environment, I will address the similarities in their incapacities, and then I will discuss how the guardianship approach can be applied to the environment. The approach I will take in comparing the environment to corporations will entail a demonstration of how the theories used to justify the extension of legal personhood to corporations can similarly be applied to the environment.

#### *III.1 The Disabled as Legal Persons —> The Environment as a Legal Person*

As discussed in section two, cognitively disabled persons are granted a special form of legal personhood status in the United States in order to protect their rights as human beings. To be specific, the CRPD concluded that disabled individuals should be judged by their strengths rather than their weaknesses, and that they are to be provided legal guardians that are meant to represent the individuals and their desires to the greatest extent without enacting paternalistic oversight.

The cognitively disabled, as persons who are unable to express clearly their thoughts and desires, closely resemble the environment that is exploited due to its inability to communicate in the same way humans do. Thus, if we are willing to grant guardianship and representation to a

group of people who technically lack the agency to be considered a metaphysical person, then Mother Nature, too, has a basis for being granted similar representation and guardianship.

After all, the underlying similarity between the disabled and the environment is not only that they cannot use language to express their desires, but the fact that they are both living. While there are many things that cannot use language, such as shoes or a lamp, what makes it significant in the case of the environment is that it is composed of entities that are organic, living beings without the full capacity to express themselves as fully functional humans can. On the basis of these similarities, we should grant Nature, as the single entity encompassing these living beings, guardianship as a way to acknowledge Her living status and offer Her the opportunity to express and protect Herself in the same way we provide such protection to the disabled who also lack this capacity.

There are different ways of extending legal personhood to the disabled and the environment. In both of these instances it is important to differentiate between guardianship and paternalism. Paternalism is when a person of authority restricts another's rights for their supposed best interest. Guardianship, on the other hand, considers the wishes of the individual in question when making legal decisions for them. This creates a mutual bond between the two rather than an authoritarian complex that places the incapacitated at a disadvantage. In addressing this concern, I propose that a way to ensure fair guardianship of Mother Nature would be for environmental scientists to represent her in legal matters rather than politicians who have conflicting interests in economic matters. Just as the United Nations Convention on the Rights of Persons with Disabilities concluded that assigning just any third-party individual was not sufficient for providing the disabled person fair representation, Mother Nature also would need representation by persons who are adequately versed in her processes and needs so as to ensure she is being provided unbiased aid. Though this is not a fail-safe method, considering that even the scientist could be easily persuaded or bribed to make certain decisions,

I do feel that the scientist is still more qualified and protected from these vices than politicians who are more distanced from the agent in consideration.

The question then becomes: how and to what do we grant such guardianship in the case of the environment - each animal, every plant, or ecosystems as a single unit? I propose that guardianship should be extended to ecosystems as a whole rather than to specific species or entities. This belief is grounded in the fact that though the pollution of only one water source or the death of one species of fish may be the topic of debate within some legal case, the destruction of any one thing in nature will almost always cause detrimental effects on the rest of the ecosystem due to the interrelated nature of reality. For instance, the pollution of a river could poison and kill a particular species of fish - a species that is the primary food source for some species of bird that will now also die due to the lack of available sustenance, and then the foxes that depend on those birds for sustenance will lose their food source, as well - and this cycle will continue to extend throughout the entire food chain until it has affected each and every tier in some way. That being said, the ideal guardian, then, would be one who focuses their studies on and has direct experience with the particular ecosystem in question. This is because a specialized expert will have a better understanding of the historical and current conditions of the specific ecosystem, as well as what would be in its best interest for maintaining an equilibrium for sustaining life.

### *III.2 The Corporation as a Legal Person —> The Environment as a Legal Person*

As we saw in the last part of my thesis, there are many different arguments people have proposed to justify extending legal personhood to corporations. I believe that when we compare the status of corporations (as commonly theorized) to the environment, we find a number of similarities. While it is true that some theories of corporations are more helpful than others, all the theories expose avenues by which legal personhood could be extended to Nature for reasons similar to those used to extend them to corporations.

### III.2.a The Concession and Nexus of Contracts Theories

First, recall the concession and nexus of contract theories that extend personhood to corporations in order to legally enforce their regulation and restriction by adjudging them ‘artificial persons.’ When considering the environment in the context of the concession and nexus of contracts theories that support corporations being granted legal personhood, we might argue that there is nothing less artificial about thinking of the environment as an artificial being or as a site of contracts than is the case for corporations. As discussed in the previous section, the environment is arguably more closely related to metaphysical persons than most things, considering its living, organic nature; so, in some ways, it is more feasible to consider the environment an artificial person than even a corporation. Thus, the environment, too, could be granted legal person status, as an artificial person that is dependent on laws to give it legal personality. Nevertheless, considering that the vague nature of this standard thereby permits almost anything to be granted such status on this basis, I consider this to be one of the less convincing ways to argue that legal personhood extends to Nature.

### III.2.b The Aggregate Theory

Next, I turn to the aggregate theory. It justifies the granting of legal personhood to corporations by extending the rights of the individuals within it to the corporation itself, thereby viewing the corporation as an extension of the individual. Thus, if the basis of the legal personhood of corporations lies in the fact that a corporation is a collection of individuals that may yield the collection rights and duties based on those of its constituents, then we can argue that the environment only further exemplifies this definition, considering that all of humanity, life, and even non-living things compose it. The environment is the broadest extension of the individual. In fact, I think it is useful to think of the environment along the model of an umbrella: a collection of humans compose a corporation, a collection of humans and corporations make up a government, and *all* humans, plus living and non-living things such as

the corporations and governments, constitute the environment. At each stage, we use the aggregate theory to grant rights to these larger entities as a way to support the rights of the individuals within them; we could extend such status to the environment in the same aggregating way we do to the corporations and governments within it.

The predominant issue with trying to extend such rights to the environment is that it only explicitly supports the rights of humans within the environment as holders of rights themselves, whereas the animals and other living entities that do not inherently hold rights are not assumed to also receive such protection. Though the environment as a whole would necessarily be granted legal personhood, the aggregate theory may only provide protection to humans as those who are extending their rights to the environment. The other creatures of nature are left exposed still, which contradicts the purpose of the argument. Thus, the weakness of the aggregate theory is that some entity only gains rights by extending the rights of humans, and only as a way to further protect humans. We, however, are aiming to find protection for *all* life.

### III.2.c The Real Entity Theory

According to the prevailing real entity theory, corporations have legal personhood because humans form a collective consciousness that functions as a real entity. I believe that the environment not only meets this requirement but extends it, considering that its collective consciousness also incorporates that of the living flora and fauna.

Some may argue that living entities in nature do not have consciousness, so they are not capable of contributing to a collective consciousness. I believe this to be an anthropocentric perspective on the matter. As I discussed earlier in the comparison to the disabled, just because nature does not communicate in the same way humans do does not mean that it is not conscious and communicative in its own unique way. Nature is extremely adaptable, and adaptability is one of the primary indicators of consciousness - to be able to discern oneself as independent from its surroundings, to recognize changes in one's surroundings, and then to alter one's own



actions according to such changes. In exemplifying nature's adaptability, a tree or plant will recognize a depletion in its water source or a lack of sunlight and, in turn, actively move its roots and self in the direction of resources in order to preserve itself. In terms of nature's ability to communicate and form a collective consciousness that acts as one, there have been many studies that prove trees communicate. According to a study done by the American Association for the Advancement of Science, "plants may 'eavesdrop' on volatile organic compounds (VOCs) released by herbivore-attacked neighbors to activate defenses before being attacked themselves."<sup>30</sup> In short, by using biological transmitters and signals, plants are able to collect and analyze data given off by adjacent organisms in order to enhance their own survival techniques. This illustrates how plants communicate with other aspects of nature, and how they recognize their individual existence in contrast to their surroundings.

Under the real entity theory, there is also the stipulation that a real entity exists independently of any one group of individuals composing it. I argue that the environment not only does this, but could actually exist and flourish without the existence of any humans, which demonstrates its extremely independent nature. Some may then argue that Nature may function independently of humans, and that all living things constitute its collective consciousness, but that Nature does not have "surroundings" that enable it be considered an independent entity on its own accord. This deepens the discussion to consider Earth's existence in relation to that of the whole universe. In discussing Nature as a holistic, independent entity that is constituted by all living things on our planet, we are basically speaking of Earth as a whole; and in doing so we are discussing Earth in relation to the other entities that compose our solar system. Thus, Nature, i.e. Earth, is its own independent, real entity with all of its inhabitants forming its collective

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<sup>30</sup> Baldwin, Ian T. "Volatile Signaling in Plant-Plant Interactions: "Talking Trees" in the Genomics Era." *Science* 311, no. 5762 (2006): 812-15.

consciousness. Considering these stipulations, Nature counts as an independent, real entity composed of a collective consciousness that is deserving of rights, if based on this theory.

Furthering this concept under the real entity theory, I believe we could argue that the environment not only *functions* as a collective consciousness of the life that composes it, but that it actually *is* a real entity. Although this claim might sound a bit outlandish at first, consider a familiar example: the government. A government is treated as an artificial person that functions to advance the goals of its populace through its formation of an actual collective consciousness that constitutes its moral agency. It's because we think of governments as expressing the will or mandate of its peoples that we think of it as having agency and having rights. I believe that we can think of the environment in the same way. Even more than any corporation or government, the environment could be thought of as a real living organism with the world's water as its blood, each continent as its organs, and each living being and thing as its cells. Indeed, the environment surpasses a corporation or a government in exemplifying the concept of a real entity because it is not only *real* but also *living*.

In anticipating the objections against this perception of the environment as a real and living entity, one may argue that the environment differs from a government because plants and animals may not have a common will to express, whereas the government does for its constituents. Furthermore, one may even argue that a government does not express an actual collective will, considering the corruption and inequality that ensues from its creation. In responding to the latter objection, I argue that whether the government actually functions in the way it was meant to or not is irrelevant because *intent* is the authoritative reference in legal matters. The intent of creating America's democratic republic was for the government to act in accordance with the will of the people, which is made possible by elected representation. Thus, according to the law, the government does hypothetically constitute a collective will of its peoples, as that was its original intent.

As for the first objection that flora and fauna do not have a will to contribute to a collective will, this also seems to be a fairly anthropocentric perspective to hold. The will of each plant and animal is to survive and persist through reproduction over time - a very simple but universal goal of all living things. At this point in time, humans now have the ability to hold very individualized goals and wills because we have surpassed the need to solely focus on securing our survival, since we have achieved dominance over the food chain. Thus, though nature's will to survive may not seem as complex as that of humans, it is nonetheless a collective will that is inherent to all living entities, including humans. I argue, then, that the collective will expressed by the environment is to survive and secure life on Earth, which is truly the foundation of all other wills.

With this added insight in how Nature functions as not only a real entity but a real, *living* entity, I believe that the real entity theory accurately applies to Nature, which justifies the extension of legal personhood to Her.

#### III.2.d The Intelligent Machine Metaphor

Finally, consider the intelligent machine metaphor. Under this theory, corporations are granted legal personhood because they act as independent, intelligent machines in that they function without the intervention of any one group of individuals. Using this approach, we could argue that the environment is arguably a natural, intelligent machine since it functions in a systematic way with or without the intervention of human action. Furthermore, it not only exists prior to and after the individual persons composing it, but it did and could continue to exist without the presence of humans altogether. In fact, at this point in time, one could even argue that the environment would probably function better without our existence. Does that not illustrate its superior status as a machine, considering we could not say the same about our relationship with it? Under this theory, humans would be merely cogs in the machine of nature -

tools for enhancing the function of the whole - which dismantles many of the anthropocentric ideals held by humanity regarding our superiority.

In proof of Nature's superiority, while Nature continues to naturally adapt to the changes we cause, humans look to nature when trying to adapt or learn. Humans are constantly dependent on Nature for our knowledge and understanding of reality, yet Nature does not look to us to learn or adapt. This seems to demonstrate that Nature exemplifies a superior intelligence and maturity even to that of humanity. If humans were truly the epitome of intelligence within our world, why would we need to rely on the environment to understand our own reality? One could argue that neither humanity nor nature inherently understand the functionings of reality, but that humanity is superior in that we utilize our perceptions of our surroundings to grasp this understanding while nature remains oblivious. However, I feel that Nature obviously does understand such inner-workings better than we because it *naturally* adapts to changes in its system without referencing how to do so from other entities. Whether Nature does this subconsciously or not, I believe that its inherent understanding of how to reestablish equilibrium proves that it understands reality better than we do.

Humans consistently use intelligence as a basis for judging other entities and placing them in a stratified order, and the environment proves its worth in this distinction through its natural adaptivity and independence. Thus, based on these attributes, Nature does exemplify a naturally intelligent machine, which justifies the extension of legal rights to it, according to the intelligent machine metaphor.

### III.2.e Evaluating the Strengths of Each Theory in Applying it to Nature

Based on the analyses of these theories in their application to Nature, I propose that the real entity theory and the intelligent machine metaphor are the two strongest avenues for

supporting the extension of legal personhood to Nature. Not only is the real entity theory the prevailing one in how to perceive corporations in U.S. law, making it an ideal theory on which base the environmental argument, but it also recognizes the holistic essence of Nature. As I have demonstrated, Nature is both real *and* living, which makes it uniquely qualified to be considered worthy of legal personhood, under the real entity theory.

As for the intelligent machine metaphor, I believe this to be another strong argument due to its philosophical basis in dismantling the anthropocentric perspective of humanity. It proves that Nature is intelligent and superior in its own way, which grants it value separate from its utilitarian benefit for humanity. One of the most difficult obstacles environmentalists will face in trying to extend rights to Nature will be this belief that Nature is simply a tool for humans as superior creatures. The intelligent machine metaphor, however, exemplifies why Nature is deserving of its own rights based on its natural superiority as the all-encompassing entity that constitutes our reality.

On the other hand, I believe the concession and nexus of contracts theories to be the weakest arguments for extending rights to Nature because of their vague and broad basis. Nearly anything could be granted rights under such guidelines. These theories bypass demonstrating why some entity should be granted rights and skip straight to how the entity is conceived under the law for some intended effect. In short, these are retroactive approaches that merely define the limits of a non-traditional rights-bearing entity rather than addressing why the entity in question is deserving of such rights in the first place.

As for the aggregate theory, I find this to be a subpar approach for the environmental movement in comparison to the real entity and intelligent machine metaphor theories because of the inherent inequalities of the approach. The aggregate theory is based on the extension of human rights to an overarching entity as a way to protect the individuals within it. As such, it automatically places all other living organisms at a disadvantage because it is merely a tool for

protecting humanity within the system rather than for protecting the system as a whole. While the real entity theory discusses the collective in terms of a collective consciousness, which opens the door to consider the consciousness of other organisms, the aggregate theory limits its interpretation by focusing on the metaphysical state of humans as a collective. Even if one were effectively able to utilize this approach in granting Nature legal personhood, it would do nothing to change the anthropocentric idea that Nature is solely valued according to its benefit to humans, which I believe limits the intended goal to view Nature as its own entity deserving of rights and protection.

## **Part IV: Extending Personhood to Nature: The Autonomy Argument**

My second main argument is grounded on the premise that autonomy has great value: we need to extend legal personhood to the environment to protect individual U.S. citizens.

### *IV.1 Autonomy: a Core American Principle that American Citizens Will Want to Protect*

The United States was created in order to escape the tyrannical rule of England's monarchy, and our Constitution is thus grounded in the beliefs of small-government and personal autonomy so as to prevent such oppression. Thus, considering the United States' ideological basis in personal autonomy and individual rights, I believe this approach of self-protection from corporations and an authoritarian government to be the ideal course of action for ensuring nature's rights in America. It veers away from a speculative argument of what Nature deserves towards a more tangible one that focuses on protecting people in terms they can readily understand. Though many Americans believe environmental rights to be of the utmost importance, such beliefs are grounded in morals or scientific data that are refutable or questioned. By contrast, the belief in personal autonomy is usually taken as a bedrock or first principle within our shared political framework, which makes it more relatable to most American citizens. Under the argument I am offering in this part of my thesis, one need not be an environmentalist to support the cause, but merely a proponent of individual rights and someone who accepts the need for protections against authoritarian governments and exploitative corporations.

### *IV.2 The Difference between American and Latin American Conceptions of Autonomy*

When referencing the historical examples of Rights of Nature in Bolivia and Ecuador, recall that these nations also placed a focus on citizen protection from the government by granting Nature legal personhood and promoting ethnodevelopment. Though the indigenous religious beliefs figured into a lobbying effort for the establishment of this law, the underlying purpose of the policy itself was to grant citizens protection from natural resource extraction. In this way, the citizens of Bolivia and Ecuador were also fighting for personal autonomy and protection from governmental and corporate actions. Thus, at first glance, it might seem that we could simply adopt the same argument that was used in these South American countries and apply it here in North America.

But there is a glaring difference in Latin America's conception of autonomy and that found in the United States. The difference lies in our demographic distribution. Most of those fighting for autonomous rights in Latin America are comparable to our Native American population, who are arguably still oppressed in many ways. In Latin America, the indigenous population is a majority of the populace, so their fight for autonomy is more grounded in an anti-establishment effort with the goal of reinforcing indigenous beliefs and ways of life; these citizens are defending a community-based autonomy rather than an individual autonomy. The United States, by contrast, celebrates a more individualized concept of autonomy in which each person, no matter his or her race, religious beliefs, etc., has the right to live and prosper as he or she wishes without constraint (as long as it does not cause harm to others). It emphasizes individual protection from entities like corporations, the government, and even communities.

If, then, we argue that legal personhood should be extended to Mother Nature because doing so will protect citizens' autonomy, we should stress in an American context that this extension will protect *individual* autonomy by preventing any group from accumulating too much power; protecting individual autonomy rights mitigates the possibility of accrued power in an



entity that can act in a tyrannical fashion over all others. This is the sort of premise that will be best received and accepted in the United States.

#### *IV.3 Ways in which Extending Legal Personhood to the Environment would Protect the Autonomy of American Citizens*

The question then becomes, *how* would granting the environment legal personhood actually protect individual autonomy? I think it is most helpful to consider the Dakota Pipeline debacle, and similar examples, in which individual citizens were unable to legally protect their self-interest in environmental rights or their way of life because they were unable to illustrate personal monetary loss by the construction plan. In contemporary U.S. law, the only way to litigate against corporate/governmental plans involving the environment is to prove that one will be monetarily affected by its construction, or that the construction acts as a substantial nuisance to the property one owns. There are many instances, however, in which people, both local and non-local, disagree with the building of a corporate plant or some other construction for other reasons: because it will mar the natural landscape and ecosystem in general, because they believe it to be morally wrong, because it will infringe on their way of life, because they do not agree with the ideals of the company, because its construction will cause immense pollution to common goods that will affect all future generations, and so on.

Under current U.S. law, citizens are not able to fight explicitly against such plans for these reasons - they are not seen as substantial enough to be taken into consideration. According to the modern standing to sue guidelines, the plaintiff must show that they have suffered an "injury in fact," establish causation in showing that the injury "fairly can be traced back to the challenged action," and show that the injury "is likely to be redressed by a favorable decision" of

the court.<sup>31</sup> Thus, for a case to hold up in court it must be oriented around proving that the plaintiff has suffered direct injury. Even then, though, were the plaintiff to prove injury, there is still a consideration of cost-benefit analysis that may award him/her damages but not injunction, so the source problem will continue to exist and cause further damage. For instance, in the United States case *Boomer v. Atlantic Cement Company* (1970), the plaintiff was awarded damages for the nuisance caused by the Atlantic Cement Company's pollution, but the court did not award injunction because the company's net-worth was considered too high in comparison to the damage they were causing to justify it be closed. As this demonstrates, our society and governmental decisions are primarily based on economic consideration in the form of benefit and cost analysis, which places the citizen at a disadvantage.

However, the concept of personal autonomy does not acknowledge this stipulation that decisions must be based on economic consideration. The central meaning of personal autonomy is freedom to pursue one's goals and desires (as long as they do not harm another); there is no necessary consideration of personal economic well-being. Thus, by making use of this concept of personal autonomy, our citizens would be able to fight for environmental change whether they had an economic argument or not. In fact, this autonomy could be either narrowly or more broadly conceived, and so be involved in many different kinds of conflicts. By extending personhood to the environment, citizens would have another legal avenue they could use to thwart environmental damage which didn't depend on an economic argument.

#### *IV.4 Existing Examples of Rights of Nature in the United States*

The argument I am making in this part of my thesis does have some precedent. The first steps towards extending rights to Nature in the United States as a way to protect individual autonomy have already been taken by five U.S. cities/communities. Craig Kauffman, a Political

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<sup>31</sup> "Substantial Interest: Standing." Legal Information Institute. Accessed April 07, 2019.  
<https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/substantial-interest-standing>.

Science professor at the University of Oregon, and his partner Pamela Martin, analyzed Pennsylvania's Tamaqua Borough, Grant Township, and Highland Township, as well as Santa Monica, California, as examples of local communities that have established such rights to Nature. In their work, Kauffman and Martin also compare these U.S. attempts to similar ones made in Ecuador and New Zealand.

Kauffman and Martin claim that the Community Environmental Legal Defense Fund (CELDF), "formed in 1995 by environmental lawyers who concluded that existing environmental laws were inadequate because they focused on mitigating harms rather than preventing them,"<sup>32</sup> is largely responsible for the actions taken by these U.S. communities. The CELDF began helping communities develop Community Bills of Rights that could provide a legal basis for residents to defend their interests against corporations invoking property rights to justify environmentally destructive behavior.

In 2006, with the aid of CELDF, Pennsylvania's Tamaqua Borough crafted and established the first Rights of Nature ordinance in the world. It invokes the community's right "to protect the health, safety, and welfare of the residents of Tamaqua Borough, the soil, groundwater, and surface water, the environment and its flora and fauna" in order "to ban corporations and other limited liability entities from engaging in the land application of sewage sludge."<sup>33</sup> According to Kauffman and Martin, this ordinance is novel because it treats the Rights of Nature as a tool for strengthening community rights in relation to corporate property rights: it enables the community members to challenge a corporation in court according to the effects the corporation is having on the ecosystem, which is easier to prove than negative effects caused on individual health.

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<sup>32</sup> Kauffman and Martin, 9.

<sup>33</sup> Ibid, 10.

It is interesting to note, however, that while this ordinance granted legal personhood to all borough residents, natural communities, and ecosystems, it explicitly denied this recognition to corporations as a way to limit their rights to interfere “with the existence and flourishing of natural communities or ecosystems.”<sup>34</sup> This denial seems to contradict the federal government’s extension of such rights to corporations, which is why the ordinance has had difficulty being upheld in court. This limitation is due to its being a mere ordinance; however, this conflict could be mitigated were the State to implement Rights of Nature because the State has greater authority.

Following the establishment of the Global Alliance for the Rights of Nature (GARN) in 2010, Pittsburgh, PA became the first major U.S. city to recognize the Rights of Nature and ban shale gas drilling and fracking as a way to “elevate the rights of people, the community and nature over corporate rights.”<sup>35</sup> Following this momentum, one of the founders of GARN began working with Santa Monica, CA to establish a Sustainability Rights Ordinance. Unlike the Tamaqua Borough ordinance, Santa Monica’s was not in response to an immediate threat to the community, but was rather an extension to a Santa Monica Sustainable City Plan that was established in 1994. In this sense, the Santa Monica case is unique in that it takes a proactive approach in ensuring future sustainable development rather than acting retroactively. But this just shows that extending rights to nature as a tactic for allowing people to protect their rights has some precedent.

Finally, in 2013 and 2014, the Highland and Grant townships of Pennsylvania passed Community Bill of Rights ordinances. Highland Township was the first to do so, and it was spearheaded by Highland’s Water Authority with the help of CELDF in response to the growing

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<sup>34</sup> Ibid, 10.

<sup>35</sup> Ibid, 14.

concern that fracking would contaminate the region's water supply.<sup>36</sup> It expanded community rights, granted ecosystems in the county the right to exist and flourish, and banned all activities of natural gas and fossil fuel extraction and waste water injection. A year later, Grant Township followed suit in instating a Community Bill of Rights ordinance in response to Pennsylvania Gas and Electric's filing for a permit to inject waste water into one of the unused wells in the township.<sup>37</sup> Considering this township relies entirely on private wells and springs for their drinking water, the residents became concerned that the injected water waste would leak into their drinking-water sources. Thus, they established their own Community Bill of Rights ordinance that prohibited depositing oil and gas waste materials in the township.

In all of these cases, Kauffman and Martin found that they conceptualize Nature on the ecosystem level, rather than individual flora or fauna, and the ecosystems are sets of "natural communities" whose welfare is necessary for the wellbeing of human communities. He found that most of these cases were retroactive approaches to immediate threats, but showed how Santa Monica's ordinance functions as a precautionary principle to prevent damage in the future. The main issue he found was in their legal standing, considering they are merely community ordinances, which are superseded by State and Federal laws. In fact, the Grant and Highland Townships' ordinances were contested in court by energy companies, and the court ruled in favor of the corporation by saying that the municipality was overstepping its authority. In response, the residents in both townships developed a new legal structure, the Home Rule Charter, in hopes of enforcing the Rights of Nature in the U.S. federal system. In summary, Kauffman and Martin concluded that, in the U.S., "Rights of Nature is linked to the concept of community rights and is

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<sup>36</sup> Ibid, 15.

<sup>37</sup> Ibid, 15.

seen as a tool for communities to protect themselves against the vagaries of corporate property rights.”<sup>38</sup>

#### *IV.5 Applying Kauffman and Martin’s Argument to the Autonomy Argument*

I believe that these cases of U.S. counties and cities establishing Rights of Nature provide a great deal of support for my claim that granting such rights can and will act as a tool for protecting individuals from exploitation by corporations and a tyrannical government. The point for which I’m arguing isn’t just a theoretical suggestion: as Kauffman and Martin show, it is building on actual examples that have already been tried in the United States.

My own argument, however, extends beyond these examples in two ways. First, I think these examples show that Rights of Nature need to be implemented on a state, and eventually federal, level if they are to be truly enforceable. The fact that these ordinances were contested in court, and the communities ultimately lost, only exemplifies the nature of our government to put the interest of corporations and economic concerns over the well-being of its citizens, which is why it will be important for us promote the extension of legal personhood to Nature on a broader level where it will have to be enforced.

Second, I believe these existing laws could be strengthened by emphasizing how extending rights to Nature protects autonomy. Were the Rights of Nature laws to be based on this concept of personal autonomy, it would help ensure that the individual’s protection and wishes were considered on an equal basis to the economic considerations. The issue now is that corporations are worth much more than nearly any damage they can cause. This makes it difficult for any individual citizen to successfully contest a corporation in court, which is why it is imperative we alter the argument to place focus on the encroachment of an individual’s autonomy rights. Thus, by extending legal personhood to Nature under the caveat of securing personal

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<sup>38</sup> Ibid, 41.

autonomy rights, it would grant citizens an alternate and broader route to legally contest the exploitative actions by corporations and the government.

## **Conclusion**

In this paper, I have provided two legal approaches that environmental movements may utilize in their attempt to establish environmental protection laws. I first proposed an argument by analogy that demonstrated how Nature resembles the disabled and corporations as non-traditional entities that have already been granted distinct forms of legal personhood in the United States. Inasmuch as we endorse the arguments to extend personhood to the disabled and corporations, we should also extend them to Nature.

I then advanced an autonomy argument that advocated for extending legal personhood to Nature as a way to further protect individual autonomy. I supplemented this autonomy argument with evidence from regions in Latin America and the United States that have already granted such rights to Nature, illustrating how and in what ways this approach yields stronger autonomy protection. In presenting my data, I was sure to compare the cases in Latin America and the United States within their cultural context so as to demonstrate why the Latin American method cannot be directly applied in the U.S. due to differences in demographics and political ideology. In referencing these cases, I also demonstrated the importance of implementing a Rights of Nature law on the state and/or national level in order to ensure that it is uniformly recognized and enforced.

I conclude that the ideal application of these two arguments would be to use them in concurrence with one another. The analogy argument acts as the foundation for proving that Nature meets the legal requirements for being considered an entity deserving of rights, and the autonomy argument acts as the mobilizing force in gaining support for the law by diversifying the environmentalist's platform and motives. I am not claiming that these are the only ways to



achieve said goal of extending rights to Nature and securing individual autonomy rights. There are myriad ways to approach this goal.

Nevertheless, I do believe that my approach addresses issues that often inhibit environmental action: namely, addressing too small an audience. In this thesis, I have tried to develop arguments that can appeal to everyone, both environmentalists and not, and unite them under a common goal. I believe that we can engage in actions that will impact all current and future generations. Though I believe environmental issues to be of the utmost importance, and that others should hold the same sentiments considering the dire situation we now face in light of climate change, I also think it is important to approach such issues from various perspectives so as to encourage a unified coalition. On my way of thinking, the broader the arguments, the higher the likelihood of their being accepted and enacted. After all, such broad arguments form a basis for unlike-minded persons to find common ground. Thus, by approaching environmentalism from a libertarian standpoint that also supports individual autonomy rights, my thesis lays the groundwork for these two groups to work together in achieving a common goal.

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